

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

BRUCE SIMPSON

PLAINTIFF

v.

Civil No. 05-6012

MONTGOMERY GRIFFITH-MAIR, et al.

DEFENDANTS

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On August 9, 2005, the court's clerk entered an order (Doc. 19) directing the plaintiff to show cause within 10 days why this action should not be dismissed for failure to prosecute against the following defendants: Anglican Rite Synod of America, Anglican Church House, United States Anglican Church House, U.S. Anglican Church House, British Church House, National Anglican Church, National Anglican Church House, Father Monty Foundation, Knights of the Lehigh Order, Oak Bay Youth Mission, White-Lenhardt-Bridgehouse, Online Edition Archbishops.org, Episcopal CC, Fathermoney.org, Padremonty.org, Scalawagz.org, and All non-incorporated entities, etc. The plaintiff had failed to serve these entities.

In response to the show cause order, the plaintiff states that "[a]ll entities listed in the show cause order are non-incorporated and nothing more than alter egos of [Montgomery Griffith-Mair]." (Doc. 20.) The plaintiff attaches as an exhibit the return of service for Griffith-Mair. (Doc. 20.)

Federal Rule of Civil Procedure 17(b) provides that where the named party is an unincorporated association, the determination as to whether that entity has the authority to sue or be sued "shall be determined by the law of the state in which the district court is held." In Arkansas, generally, unincorporated associations do not have the capacity to sue or be sued. *See*

Fausett and Co., Inc. v. Bogard, 685 S.W.2d 153, 155 (Ark. 1985). Based on the plaintiff's assertion that the relevant defendants are unincorporated entities that serve merely as aliases for defendant Griffith-Mair, the relevant defendants do not have the capacity to be sued, and thus should be dismissed from this action. The plaintiff will not be harmed to by the dismissal of these defendants as Griffith-Mair remains a defendant in the action, and plaintiff contends that Griffith-Mair is the person in charge of and running these various entities.

Furthermore, plaintiff has failed to demonstrate that service was executed on these various unincorporated entities, thus dismissal would be appropriate under Federal Rule of Civil Procedure 4(m) (if service not made on defendant within 120 days after filing complaint, court shall dismiss action without prejudice to that defendant).

Therefore, it is recommended that the following defendants should be dismissed from this action: Anglican Rite Synod of America, Anglican Church House, United States Anglican Church House, U.S. Anglican Church House, British Church House, National Anglican Church, National Anglican Church House, Father Monty Foundation, Knights of the Lehigh Order, Oak Bay Youth Mission, White-Lenhardt-Bridgehouse, Online Edition Archbishops.org, Episcopal CC, Fathermoney. org, Padremonty.org, Scalawagz.org, and All non-incorporated entities, etc.

The parties have ten days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely written objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 25th day of August 2005.

/s/ Bobby E. Shepherd

HON. BOBBY E. SHEPHERD
UNITED STATES MAGISTRATE JUDGE